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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,299	08/13/2001	Solgun Drevik	53920-64133	6684

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/12/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/856,299

Applicant(s)

DREVIK ET AL. *CR*

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 1/6/04 have been fully considered but they are not persuasive. Applicant argues Darby requires the elongated lower end or posterior end portion of the product according to Darby has a uniform width and the second end portion of the product does not have arcuate long sides but rather sides having arcuate parts and straight parts. However, Darby discloses the pad is generally 'v'-shaped (Abstract), which means it does not have a uniform width. Also, Figure 4A of Darby, in particular, shows the long sides of this end portion are essentially arcuate and curved inwards towards a longitudinal centerline of the article. Applicant refers to page 3, third and fourth paragraphs and the paragraph bridging pages 3 and 4 to support the specific claimed dimensions of the present application. However, while the cited portion of the specification discloses a specific angle, the specification also discloses the absorbent product is at least in part arcuate and that various forms for the long sides are possible as long as the longitudinal side edges of the product have essentially arc shape (page 3, lines 14-23), which Darby discloses in Figures 4A-4C. Applicant also refers to page 9, lines 22-24 to confirm the criticality of the angle ν used to specify a favorable arc shape of the long sides 2 and 3 of the present invention. However, the cited portion on page 9 discloses a favorable arc shape without providing the criticality of the specific dimensions. The invention of Darby provides an absorbent article with arcuate long sides that can be discreetly worn in a thong-type garment while providing protection for the user. The long sides of the invention of Darby are essentially arcuate and the

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invention as a whole solves the same problem as the present application. Therefore, the general conditions of the claimed invention are disclosed in the prior art. The specification contains no disclosure of either the critical nature of the claim limitations nor any unexpected results arising therefrom, and that as such the limitations were arbitrary and therefore obvious. Such unsupported limitations cannot be a basis for patentability, since where patentability is said to be based upon particular dimensions or another variable in the claim, the applicant must show that the chosen variables are critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ 2d 1934 (Fed. Cir. 1990). More particularly, where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Swain et al.*, 33 CCPA (Patents) 1250, 156 F.2d 239, 70 USPQ 412; *Minnesota Mining and Mfg. Co. v Coe*, 69 App. D.C. 217, 99 F. 2d 986, 38 USPQ 213; *Allen et al. V. Coe*, 77 App. D.C. 324, 135 F. 2d 11, 57 USPQ 136.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darby USPN 5683373 (cited as WO 9739713).

As to claims 1-4 and 7, Darby discloses the present invention substantially as claimed. However, Darby does not disclose the specific product length, width, and angle (ν). According to the definition of the angle (ν) in the specification (page 10, lines 2-10) a point (Q) is localized in Darby at the transition between the arcuate and inward curved long side portions and the part in the front of the article, which represents the wider and more uniform portion of the article. Figures 4A – 4C show the long sides of this end portion are essentially arcuate and curved inwards towards a longitudinal centerline of the article. Although Darby does not specifically disclose the measurement of the angle, it is apparent the angle lies between 95 and 110 degrees in that the general features of the present application are disclosed in Figures 4A-4C of Darby, the difference being the figures in the present invention have a somewhat longer end portion. It would have been an obvious matter of design choice to provide the article of Darby with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. Additionally, Darby discloses it is desired to

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provide the article in various sizes to fit various users (col. 5, lines 48-55). A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 5, Darby discloses attachment means in the lower side of the article (col. 6, lines 8-10).

5. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darby in view of Mattingly USPN 4806411. Darby discloses the present invention substantially as claimed. However, Darby does not disclose three fastening strips on the article. Mattingly discloses three longitudinally extending adhesive lines 18 for securing the absorbent article to a crotch portion of a user's panties. It would have been obvious to one having ordinary skill in the art to incorporate the adhesive lines of Mattingly in the absorbent article of Darby for securely fastening the absorbent article.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
Art Unit 3761



March 10, 2004



JOHN S. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700